

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Marshall Ray Miller, #249557,
Petitioner,
vs.
Warden Stan Burt,
Respondent.

C.A. No. 3:06-2755-TLW-JRM

ORDER

A petition for a writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 has been submitted to the Court by the *pro se* petitioner. (Doc. # 1). This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Joseph R. McCrorey, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge McCrorey recommends that the section 2241 Petition in the above captioned case be dismissed without prejudice and without requiring issuance and service of process. (Doc. # 5). Petitioner has filed objections to the Report. (Doc. # 11).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and

Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court accepts the Report.

THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report is **ACCEPTED** (Doc. # 5), petitioner's objections are **OVERRULED** (Doc. # 11); and the section 2241 Petition in the above captioned case is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

August 20, 2007
Florence, South Carolina